
APPENDIX A
List of Commenters

**Verizon New England Inc., et al., Section 271 Application to
Provide In-Region InterLATA Services in Massachusetts**

CC Docket No. 01-9

Comments

Commenters:

A.R.C. Networks, Inc.
Association for Local Telecommunications Services (ALTS); XO Communications, Inc., &
Focal Communications Corporation (filing jointly)
Association of Communications Enterprises
AT&T Corp.
Commercial Internet Exchange Association
Competitive Telecommunications Association (CompTel)
Conversent Communications of Massachusetts, L.L.C.
Covad Communications Company
Fiber Technologies
Global Crossing North America, Inc.
Global NAPS, Inc.
Massachusetts Attorney General
Massachusetts Coalition for Competitive Phone Service
Network Access Solutions
New England Public Communications Council, Inc.
NOBLE (North of Boston Library Exchange, Inc.)
RCN BecoCom, L.L.C.
Rhythms Netconnections Inc.
Sprint Communications Company L.P.
Telecommunications Advocacy Project
Winstar Communications, Inc.
WorldCom, Inc.

**Verizon New England Inc., et al., Section 271 Application to
Provide In-Region InterLATA Services in Massachusetts**

CC Docket No. 01-9

Reply Comments

Commenters:

AT&T Corp.
Commercial Internet Exchange Association
Competition Policy Institute
Covad Communications Company
Massachusetts Attorney General's Office
Massachusetts Department of Telecommunications & Energy
Network Access Solutions
United States Internet Provider Alliance
Verizon New England
Winstar Communications, Inc.
WorldCom, Inc.

**Verizon New England Inc., et al., Section 271 Application to
Provide In-Region InterLATA Services in Massachusetts**

CC Docket No. 00-176

Comments

Commenters:

Affiliated Chambers of Commerce of Greater Springfield, Inc.
Alliance for Education
Alliance for Public Technology
Arts Boston
Association of Communications Enterprises
Association for Local Telecommunications Services (ALTS)
AT & T Corp.
BCNC (Business in Partnership with the Community)
Blackstone valley Vocational Regional School District
Boston Partners in Education
Boston Private Industry Council
Boston Public Schools
Bristol Workforce Investment Board
Cape and Islands United Way
Cape Cod Technology Council, Inc.
Century 21
Chinatown Business Association
Chemetal
City of Boston, MA, Office of the Mayor
City of Brockton, MA, Office of the Mayor
City of Chelsea, MA
City of Fall River, MA
City of Haverhill, Haverhill, MA
City of Marlborough, MA, Office of the Mayor
City of Melrose, MA, Office of the Mayor
City of New Bedford, Office of the Mayor
City of Taunton, MA, Office of the Mayor
City of Taunton, MA, Mayor's Office of Economic Development
Communica
Competitive Telecommunications Association
CONQUEST, Inc.
Consulado General de la Republica Dominicana
Covad
Diane Davis Associates
Florence Paint & Decorating Center, Inc.
Frank M. Hynes, State Representative

Greater New Bedford Workforce investment Board, Inc.
Haddad Electronic Supply Inc.
Hispanic-American Chamber of Commerce
Immigrant Learning Center
Just a Start Corporation
Keep America Connected, et al.
League of Latin American Citizens
Lynn Area Chamber of Commerce
Martin L. King, Jr. Business Empowerment Center
Massachusetts Attorney General
Massachusetts House of Representatives
Massachusetts Department of Telecommunications & Energy
Massachusetts Rural Development Council, Inc.
MATP Center (Massachusetts Assistive Technology Partnership Center)
Mentor
Merrimack Valley Economic Development Council, Inc.
MetroWest Chamber of Commerce
National Association for the Advancement of Colored People, Washington Bureau
National Association of Partners in Education
National Black Chamber of Commerce, et al.
National Congress for Puerto Rican Rights
NECLEC, LLC
Network Access Solutions Corporation
New Networks Institute
Northern Essex Community College
Onsite Access Local, L.L.C.
Organizations Concerned About Rural Education (OCRE)
Plymouth Area Chamber of Commerce
Puerto Rican Cultural Center
Puerto Rico Federal Affairs Administration
Public Schools of Springfield, MA
Rainbow Push Coalition
RCN BecoCom, L.L.C.
RNK Inc. d/b/a RNK Telecom
Regional Employment Board of Hampden County, Inc.
Rhythms Netconnections Inc.
Saunders Hotel Group
Shepley Wood Products, Inc.
Southern Essex Workforce Investment Board
Springfield Bilingual Veteran's Outreach Center
Sprint Communications Company L.P.
Stanton Insurance Agency, Inc.
Stik-II Products
Telecommunications Insight Group
Telecommunications Research and Action Center (TRAC)
The October Company, Inc.

The Lowell Plan
Thomas J. O'Brien, State Representative
Town of Braintree, MA
Town of Burlington, MA
Town of Cohasset, MA
Town of Randolph, MA
Town of Scituate, MA
United Seniors Health Cooperative
University of Massachusetts, Boston
Urban League of Eastern Massachusetts Inc.
Vinny deMacedo, State Representative
Waltham West Suburban Chamber of Commerce
Wellesley Chamber of Commerce, Inc.
Winstar Communications, Inc.
Worcester Area Chamber of Commerce
WorldCom, Inc.
World Institute on Disability, et al.
Z-Tel Communications, Inc.

**Verizon New England Inc., et al., Section 271 Application to
Provide In-Region InterLATA Services in Massachusetts**

CC Docket No. 00-176

Reply Comments

Commenters:

Alliance for Public Technology
Allegiance Telecom of Massachusetts, Inc.
AT&T Corp.
Covad
Digital Broadband Communications, Inc.
Fiber Technologies, Inc.
Keep America Connected, et al.
Massachusetts Attorney General
Massachusetts Department of Telecommunications & Energy
National Consumers League
RCN BecoCom
Rhythms NetConnections Inc.
Telecommunications Research & Action Center (TRAC)
Verizon
Winstar Communications, Inc.
WorldCom, Inc.

Appendix B

Statutory Requirements – Checklist Items 6-12

1. *Checklist Item 6 – Unbundled Local Switching.* Section 271(c)(2)(B)(ix) requires BOCs to provide “[l]ocal switching unbundled from transport, local loop transmission, or other services.”¹ To satisfy its obligations under this subsection, an applicant must demonstrate compliance with the Commission rules effective as of the date of the application relating to unbundled local switching, must of which are set forth in detail in our prior section 271 orders.² The Commission revised these rules in the *UNE Remand Order*, which was released on November 5, 1999. That order generally retained the unbundling obligations for local switching while narrowing the scope of obligation for certain geographic areas.³ In the *UNE Remand Order*, the Commission required that incumbent LECs need not provide access on an unbundled basis to packet switching except in certain limited situations.⁴

2. *Checklist Item 7 – 911/E911 Access and Directory Assistance/Operator Services.* Section 271(c)(2)(B)(vii) of the Act requires a BOC to provide “[n]ondiscriminatory access to – (I) 911 and E911 services.”⁵ In the *Ameritech Michigan Order*, the Commission found that “section 271 requires a BOC to provide competitors access to its 911 and E911 services in the same manner that a BOC obtains such access, *i.e.*, at parity.”⁶ Specifically, the Commission found that a BOC “must maintain the 911 database entries for competing LECs with the same accuracy and reliability that it maintains the database entries for its own customers.”⁷ For facilities-based carriers, the BOC must provide “unbundled access to [its] 911 database and 911 interconnection, including the provision of dedicated trunks from the requesting carrier’s switching facilities to the 911 control office at parity with what [the BOC] provides to itself.”⁸ Section 271(c)(2)(B)(vii)(II) and section 271(c)(2)(B)(vii)(III) require a BOC to provide

¹ 47 U.S.C. § 271(c)(2)(B)(vi); *see also SWBT Texas order*, 15 FCC Rcd at 18520, para. 336; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20722.

² *See SWBT Texas Order*, 15 FCC Rcd at 18520-22, paras. 336-38; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20772, para. 207.

³ *UNE Remand Order*, 15 FCC Rcd at 3822-32, paras. 276-99 (limiting an incumbent LEC’s general duty to unbundle circuit switching when a requesting telecommunications carrier serves end users in the top 50 MSAs, in Density Zone, with four or more voice grade lines, provided that such LEC provides access to EELs)

⁴ *UNE Remand Order*, 15 FCC Rcd at 3838-3919.

⁵ 47 U.S.C. § 271(c)(2)(B)(vii).

⁶ *Ameritech Michigan Order*, 12 FCC Rcd at 20679, para. 256.

⁷ *Id.*

⁸ *Id.*

nondiscriminatory access to “directory assistance services to allow the other carrier’s customers to obtain telephone numbers” and “operator call completion services,” respectively.⁹ Section 251(b)(3) of the Act imposes on each LEC “the duty to permit all [competing providers of telephone exchange service and telephone toll service] to have nondiscriminatory access to . . . operator services, directory assistance, and directory listing, with no unreasonable dialing delays.”¹⁰ The Commission concluded in the *Second BellSouth Louisiana Order* that a BOC must be in compliance with the regulations implementing section 251(b)(3) to satisfy the requirements of sections 271(c)(2)(B)(vii)(II) and 271(c)(2)(B)(vii)(III).¹¹ In the *Local Competition Second Report and Order*, the Commission held that the phrase “nondiscriminatory access to directory assistance and directory listings” means that “the customers of all telecommunications service providers should be able to access each LEC’s directory assistance service and obtain a directory listing on a nondiscriminatory basis, notwithstanding: (1) the identity of a requesting customer’s local telephone service provider; or (2) the identity of the telephone service provider for a customer whose directory listing is requested.”¹² The

⁹ 47 U.S.C. §§ 271(c)(2)(B)(vii)(II), (III).

¹⁰ 47 U.S.C. § 251(b)(3). The Commission implemented section 251(b)(3) in the *Local Competition Second Report and Order*. 47 C.F.R. § 51.217; *In re Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd 19392 (1996) (*Local Competition Second Report and Order*) vacated in part, *People of the State of California v. FCC*, 124 F.3d 934 (8th Cir. 1997), overruled in part, *AT&T Corp. v. Iowa Utils. Bd.*, 119 S. Ct. 721 (1999); see also *Implementation of the Telecommunications Act of 1996: Provision of Directory Listings Information under the Telecommunications Act of 1934*, Notice of Proposed Rulemaking, 14 FCC Rcd 15550 (1999) (*Directory Listings Information NPRM*).

¹¹ While both sections 251(b)(3) and 271(c)(2)(B)(vii)(II) refer to nondiscriminatory access to “directory assistance,” section 251(b)(3) refers to nondiscriminatory access to “operator services,” while section 271(c)(2)(B)(vii)(III) refers to nondiscriminatory access to “operator call completion services.” 47 U.S.C. §§ 251(b)(3), 271(c)(2)(B)(vii)(III). The term “operator call completion services” is not defined in the Act, nor has the Commission previously defined the term. However, for section 251(b)(3) purposes, the term “operator services” was defined as meaning “any automatic or live assistance to a consumer to arrange for billing or completion, or both, of a telephone call.” *Local Competition Second Report and Order*, 11 FCC Rcd at 19448, para. 110. In the same order the Commission concluded that busy line verification, emergency interrupt, and operator-assisted directory assistance are forms of “operator services,” because they assist customers in arranging for the billing or completion (or both) of a telephone call. *Id.* at 19449, para. 111. All of these services may be needed or used to place a call. For example, if a customer tries to direct dial a telephone number and constantly receives a busy signal, the customer may contact the operator to attempt to complete the call. Since billing is a necessary part of call completion, and busy line verification, emergency interrupt, and operator-assisted directory assistance can all be used when an operator completes a call, the Commission concluded in the *Second BellSouth Louisiana Order* that for checklist compliance purposes, “operator call completion services” is a subset of or equivalent to “operator service.” *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20740, n.763. As a result, we use the nondiscriminatory standards established for operator services to determine whether nondiscriminatory access is provided.

¹² 47 C.F.R. § 51.217(c)(3); *Local Competition Second Report and Order*, 11 FCC Rcd at 19456-58, paras. 130-35. The *Local Competition Second Report and Order*’s interpretation of section 251(b)(3) is limited “to access to each LEC’s directory assistance service.” *Id.* at 19456, para. 135. However, section 271(c)(2)(B)(vii) is not limited to the LEC’s systems but requires “nondiscriminatory access to . . . directory assistance to allow the other carrier’s (continued....)

Commission concluded that nondiscriminatory access to the dialing patterns of 4-1-1 and 5-5-5-1-2-1-2 to access directory assistance were technically feasible, and would continue.¹³ The Commission specifically held that the phrase "nondiscriminatory access to operator services" means that "... a telephone service customer, regardless of the identity of his or her local telephone service provider, must be able to connect to a local operator by dialing '0,' or '0 plus' the desired telephone number."¹⁴

3. Competing carriers may provide operator services and directory assistance by either reselling the BOC's services or by using their own personnel and facilities to provide these services. Our rules require BOCs to permit competitive LECs wishing to resell the BOC's operator services and directory assistance to request the BOC to brand their calls.¹⁵ Competing carriers wishing to provide operator services or directory assistance using their own facilities and personnel must be able to obtain directory listings *either* by obtaining directory information on a "read only" or "per dip" basis from the BOC's directory assistance database, or by creating their own directory assistance database by obtaining the subscriber listing information in the BOC's database.¹⁶ Although the Commission originally concluded that BOCs must provide directory assistance and operator services on an unbundled basis pursuant to sections 251 and 252, the Commission removed directory assistance and operator services from the list of required unbundled network elements in the *Local Competition Third Report and Order*.¹⁷ Checklist item obligations that do not fall within a BOC's obligations to provide unbundled network elements are not subject to the requirements of sections 251 and 252, including the requirement that rates

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customers to obtain telephone numbers." 47 U.S.C. § 271(c)(2)(B)(vii). Combined with the Commission's conclusion that "incumbent LECs must unbundle the facilities and functionalities providing operator services and directory assistance from resold services and other unbundled network elements to the extent technically feasible," *Local Competition First Report and Order*, 11 FCC Rcd at 15772-73, paras. 535-37, section 271(c)(2)(B)(vii)'s requirement should be understood to require the BOCs to provide nondiscriminatory access to the directory assistance service provider selected by the customer's local service provider, regardless of whether the competitor; provides such services itself; selects the BOC to provide such services; or chooses a third party to provide such services. See *Directory Listings Information NPRM*.

¹³ *Local Competition Second Report and Order*, 11 FCC Rcd at 19464, para. 151.

¹⁴ *Id.* at para. 112.

¹⁵ 47 C.F.R. § 51.217(d); *Local Competition Second Report and Order*, 11 FCC Rcd at 19463, para. 148. For example, when customers call the operator or calls for directory assistance, they typically hear a message, such as "thank you for using XYZ Telephone Company." Competing carriers may use the BOC's brand, request the BOC to brand the call with the competitive carriers name or request that the BOC not brand the call at all. 47 C.F.R. § 51.217(d).

¹⁶ 47 C.F.R. § 51.217(C)(3)(ii); *Local Competition Second Report and Order*, 11 FCC Rcd at 19460-61, paras. 141-44.

¹⁷ *UNE Remand Order*, 15 FCC Rcd at 3891-92, paras. 441-42.

be based on forward-looking economic costs.¹⁸ Checklist item obligations that do not fall within a BOC's UNE obligations, however, still must be provided in accordance with sections 201(b) and 202(a), which require that rates and conditions be just and reasonable, and not unreasonably discriminatory.¹⁹

4. *Checklist Item 8 – White Pages Directory Listing.* Section 271(c)(2)(B)(viii) of the Act requires a BOC to provide “[w]hite pages directory listings for customers of the other carrier’s telephone exchange service.”²⁰ Section 251(b)(3) of the Act obligates all LECs to permit competitive *providers* of telephone exchange service and telephone toll service to have nondiscriminatory access to directory listings.²¹ In the *Second BellSouth Louisiana Order*, the Commission found that a BOC satisfies the requirements of checklist item 8 by demonstrating that it: (1) provided nondiscriminatory appearance and integration of white page directory listings to competitive LEC’s customers; and (2) provided white page listings for competitors’ customers with the same accuracy and reliability that it provides its own customers.²²

5. *Checklist Item 9 – Numbering Administration.* Section 271(c)(2)(B)(ix) of the Act requires a BOC to provide “nondiscriminatory access to telephone numbers for assignment to the other carrier’s telephone *exchange* service customers,” until “the date by which telecommunications numbering administration, guidelines, plan, or rules are established.”²³ The checklist mandates compliance with “such guidelines, plan, or rules” after they have been established.²⁴ A BOC must demonstrate that it adheres to industry numbering administration guidelines and Commission rules.²⁵

¹⁸ *Local Competition Third Report and Order* at para. 470. See generally 47 U.S.C. §§ 251-52; see also 47 U.S.C. § 252(d)(1)(A)(i) (requiring UNE rates to be “based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the ... network element”).

¹⁹ *Local Competition Third Report and Order* at paras. 470-73; see also 47 U.S.C. §§ 201(b), 202(a).

²⁰ 47 U.S.C. § 271(c)(2)(B)(viii).

²¹ 47 U.S.C. § 251(b)(3). In the *Second BellSouth Louisiana Order*, the Commission concluded that, “consistent with the Commission’s interpretation of ‘directory listing’ as used in section 251(b)(3), the term ‘white pages’ in section 271(c)(2)(B)(viii) refers to the local alphabetical directory that includes the residential and business listings of the customers of the local exchange providers.” *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20748, para. 255. The Commission further concluded, “the term ‘directory listing,’ as used in this section, includes, at a minimum the subscriber’s name, address, telephone number, or any combination thereof.” *Id.*

²² *Id.*

²³ 47 U.S.C. § 271(c)(2)(B)(ix).

²⁴ *Id.*

²⁵ See *Second Bell South Louisiana Order*, 13 FCC Rcd at 20752; see also *Numbering Resource Optimization, Report and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 7574 (2000); *Numbering Resource* (continued....)

6. *Checklist Item 10 – Databases and Associated Signaling.* Section 271(c)(2)(B)(x) of the Act requires a BOC to provide “nondiscriminatory access to databases and associated signaling necessary for call routing and completion.”²⁶ In the *Second BellSouth Louisiana Order*, the Commission required BellSouth to demonstrate that it provided requesting carriers with nondiscriminatory access to: “(1) signaling networks, including signaling links and signaling transfer points; (2) certain call-related databases necessary for call routing and completion, or in the alternative, a means of physical access to the signaling transfer point linked to the unbundled database; and (3) Service Management Systems (SMS).”²⁷ The Commission also required BellSouth to design, create, test, and deploy Advanced Intelligent Network (AIN) based services at the SMS through a Service Creation Environment (SCE).²⁸ In the *Local Competition First Report and Order*, the Commission defined call-related databases as databases, other than operations support systems, that are used in signaling networks for billing and collection or the transmission, routing, or other provision of telecommunications service.²⁹ At that time the Commission required incumbent LECs to provide unbundled access to their call-related databases, including but not limited to: the Line Information Database (LIDB), the Toll Free Calling database, the Local Number Portability database, and Advanced Intelligent Network databases.³⁰ In the *UNE Remand Order*, the Commission clarified that the definition of call-related databases “includes, but is not limited to, the calling name (CNAM) database, as well as the 911 and E911 databases.”³¹

7. *Checklist Item 11 – Number Portability.* Section 271(c)(2)(B) of the Act requires a BOC to comply with the number portability regulations adopted by the Commission pursuant to section 251.³² Section 251(b)(2) requires all LECs “to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.”³³ The Act defines number portability as “the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without *impairment* of quality,

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Optimization, Second Report and Order, Order on Reconsideration in CC Docket No. 99-200 and Second Further Notice of Proposed Rulemaking in CC Docket No. 99-200, CC Docket Nos. 96-98; 99-200 (rel. Dec. 29, 2000).

²⁶ 47 U.S.C. § 271(c)(2)(B)(x).

²⁷ *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20753, para. 267.

²⁸ *Id.* at 20755-56, para. 272.

²⁹ *Local Competition First Report and Order*, 11 FCC Rcd at 15741, n.1126; *UNE Remand Order*, 15 FCC Rcd at 3875, para. 403.

³⁰ *Local Competition First Report and Order*, 11 FCC Rcd at 15741-42, para. 484.

³¹ *UNE Remand Order*, 15 FCC Rcd at 3875, para. 403.

³² 47 U.S.C. § 271(c)(2)(B)(xii).

³³ *Id.* § 251(b)(2).

reliability, or convenience when switching from one telecommunications carrier to another.”³⁴ In order to prevent the cost of number portability from thwarting local competition, Congress enacted section 251(e)(2), which requires that “[t]he cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.”³⁵ Pursuant to these statutory provisions, the Commission requires LECs to offer interim number portability “to the extent technically feasible.”³⁶ The Commission also requires LECs to gradually replace interim number portability with permanent number portability.³⁷ The Commission has established guidelines for states to follow in mandating a competitively neutral cost-recovery mechanism for interim number portability,³⁸ and created a competitively neutral cost-recovery mechanism for long-term number portability.³⁹

8. *Checklist Item 12 – Local Dialing Parity.* Section 271(c)(2)(B)(xii) requires a BOC to provide “[n]ondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement *local* dialing parity in accordance with the requirements of section 251(b)(3).”⁴⁰ Section 251(b)(3) imposes upon all LECs “[t]he duty to provide dialing parity to competing providers of telephone exchange service and telephone toll

³⁴ *Id.* § 153(30).

³⁵ *Id.* § 251(e)(2); see also *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20757, para. 274; *In the Matter of Telephone Number Portability*, Third Report and Order, 13 FCC Rcd 11701, 11702-04 (1998) (*Third Number Portability Order*); *In the Matter of Telephone Number Portability*, Fourth Memorandum Opinion and Order on Reconsideration, CC Docket No. 95-116, at paras. 1, 6-9 (Jun. 23, 1999) (*Fourth Number Portability Order*).

³⁶ *Fourth Number Portability Order* at para. 10; *In re Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352, 8409-12, paras. 110-116 (1996) (*First Number Portability Order*); see also 47 U.S.C. § 251(b)(2).

³⁷ See 47 C.F.R. §§ 52.3(b)-(f); *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20758, para. 275; *First Number Portability Order*, 11 FCC Rcd at 8355 and 8399-8404, paras. 3 and 91; *Third Number Portability Order*, 13 FCC Rcd at 11708-12, paras. 12-16.

³⁸ See 47 C.F.R. § 52.29; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20758, para. 275; *First Number Portability Order*, 11 FCC Rcd at 8417-24, paras. 127-140.

³⁹ See 47 C.F.R. §§ 52.32, 52.33; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20758, para. 275; *Third Number Portability Order*, 13 FCC Rcd at 11706-07, para. 8; *Fourth Number Portability Order* at para. 9.

⁴⁰ Based on the Commission’s view that section 251(b)(3) does not limit the duty to provide dialing parity to any particular form of dialing parity (*i.e.*, international, interstate, intrastate, or local), the Commission adopted rules in August 1996 to implement broad guidelines and minimum nationwide standards for dialing parity. *Local Competition Second Report and Order*, 11 FCC Rcd at 19407; *Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket No. 95-185, Further Order On Reconsideration, FCC 99-170 (rel. July 19, 1999).

service with no unreasonable dialing delays.”⁴¹ Section 153(15) of the Act defines “dialing parity” as follows:

[A] person that is not an affiliate of a local exchange carrier is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications services provider of the customer’s designation⁴²

9. Our rules implementing section 251(b)(3) provide that customers of competing carriers must be able to dial the same number of digits the BOC’s customers dial to complete a local telephone call.⁴³ Moreover, customers of competing carriers must not otherwise suffer inferior quality service, such as unreasonable dialing delays, compared to the BOC’s customers.⁴⁴

⁴¹ 47 U.S.C. § 251(b)(3).

⁴² *Id.* at § 153(15).

⁴³ 47 C.F.R. §§ 51.205, 51.207.

⁴⁴ See 47 C.F.R. § 51.207 (requiring same number of digits to be dialed); *Local Competition Second Report and Order*, 11 FCC Rcd at 19400, 19403.

SEPARATE STATEMENT OF CHAIRMAN MICHAEL K. POWELL

Re: Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) and Verizon Global Networks Inc., for Authorization to Provide In-Region, InterLATA Services in Massachusetts (CC Docket No. 01-9)

I write separately to explain the bases upon which I support this *Order*, which approves an application by Verizon to provide in-region, interLATA service in Massachusetts, pursuant to section 271 of the Telecommunications Act of 1996.

There was a time when the Commission's interpretation of section 271 was so fluid that it was difficult to ascertain precisely what was required of a Bell Company to enable it to attain approval to enter the long distance market. The Commission was criticized for "hiding the ball" in that, in the face of undeniably weak applications, we declined to provide guidance regarding what we would find to be a persuasive showing of compliance with the statutory "competitive checklist."

Under the stewardship of the previous Chairman, however, the Commission concertedly labored to provide more detailed guidance, notwithstanding the strict limitations imposed on our deliberations by the 90-day statutory deadline for approving or rejecting section 271 applications. The fruits of this effort have been that, of the more than five years in which we have been responsible for implementing section 271, we have adopted all five approval orders only in the last 16 months. This cluster of recent approvals (which were supported by all of my present colleagues) is, in my view, the result of simple logic: without a clear explanation of what they needed to do to gain section 271 approval, Bell Companies lacked adequate incentives and ability to do what this provision intended, namely, open local markets in exchange for entry into the in-region, interLATA telecommunications market.

But future applicants and other interested parties are admonished that, even after more than a year of applying a standard that provides section 271 applicants the guidance they need to succeed, the Commission will continue to apply the same rigor it always has to these questions. It is not overstating matters to point out that the legal and policy questions encompassed by these proceedings are extraordinarily complex and, most often, close questions must be resolved. As such, there still will be times when the Commission receives an application that either fails to meet the demanding standard outlined in our precedent, or fails based on questions that surface for the first time.

With respect to the application before us, though it has some weaknesses, I believe it is consistent with our precedent and merits approval. The central concern with this application is the rate Verizon offers for switching. It is clearly higher than those we have seen in some other states. Our task under the checklist, however, is to ensure that whatever rates are offered are "cost-based" and the product of a forward-looking methodology (*i.e.*, TELRIC). In evaluating section 271 applications, the Commission does not conduct completely independent rate

proceedings. Thus, we are left to examine whether a state commission demonstrates intent and some ability to use the appropriate methodology, and whether the rates ultimately relied on in the application are within the range that a reasonable application of TELRIC principles would produce.

Here, Verizon relies on a switching rate lower than that set by the Massachusetts Department, recognizing the Commission's concern that the state-set rate might not be appropriately cost-based. Verizon chose simply to offer a switching rate similar to that we approved in New York. In the *Bell Atlantic New York Order*, we found this rate to be consistent with the cost-based methods we require. Given that, I believe we are constrained to approve the rate unless we find it unquestionably clear that the rate is not built on the proper TELRIC foundation. In contrast, opponents of this application argue that we should not rely on the New York rate, because the New York Commission is on the verge of revising it, having found an arguable input error in its previous methodology. It is alleged that this revision will result in a substantially lower rate and thus we should not endorse the current rate for Massachusetts.

This is not an idle concern, for we recognize the importance of cost-based rates to new entrants hoping to enter the incumbent's local market. I must conclude, however, that we cannot properly reject an application from one state that is consistent with precedent, on the basis of speculation regarding the outcome of another state's future rate proceeding. We cannot know with sufficient certainty what will be the full impact on the rates of that future proceeding, even if it is generally accepted that the rate is likely to be lower. Nor can we, on this record and within the constraints of this 90-day proceeding, conduct our own *de novo* evaluation of these switching rates, so as to revise our prior decision. Moreover, I cannot agree that we should, as a prior condition of approving this application, compel Verizon (through formal or informal means) to mirror its Massachusetts rates with any revisions that occur in New York. Taking such action now, as a condition of approval, would impermissibly subject the Massachusetts Department to the regulatory actions of another state and might well interfere with the Department's ongoing ratemaking proceedings.

That said, approval today does not forever insulate the switching rate Verizon has successfully proffered in this application. If New York in fact revises its rates downward after concluding that its prior determinations were not soundly cost-based, neither Verizon nor anyone else could properly rely in future applications on the rates we approved in the *Bell Atlantic New York Order* without new substantiation. Furthermore, depending on the scope of the New York Commission's upcoming decision on rates, this Commission might determine that Verizon has subsequently "ceased to meet [one] of the conditions required for [section 271] approval," thereby empowering us to take remedial action under section 271(d)(6). Thus, there may be situations after the New York Commission rules in which I would support taking action that would have the practical effect of requiring Verizon to find a new cost-based rate for switching for a few months until the Massachusetts Department resets its rates. I have full confidence that the Massachusetts Department will take account of New York's experience, as well as carefully ensure that any rates it chooses are based on sound TELRIC methodology, as described in this and prior Commission orders.

For these reasons and with these caveats, I support adoption of this section 271 application. I wish to thank, in particular, the Massachusetts Department, the Department of Justice and our tireless Common Carrier Bureau staff for their exemplary skill, drive and stamina in bringing this *Order* to fruition.

**SEPARATE STATEMENT OF
COMMISSIONER SUSAN NESS**

Re: Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) and Verizon Global Networks Inc., for Authorization to Provide In-Region, InterLATA Services in Massachusetts (CC Docket No. 01-9)

Notwithstanding serious reservations about Verizon New England's pricing of unbundled network elements, I vote to approve this application to provide long-distance services in Massachusetts. On balance, I believe that Massachusetts consumers will benefit from heightened competition in both the long distance and local markets. Although I vote for this order with some trepidation, I am optimistic that this Commission and the Massachusetts Department of Telecommunications and Energy (DTE) will maintain vigilance to ensure that the market-opening requirements mandated by Congress continue to be met.

Enduring competition in the local market will only take root and thrive if we and our state colleagues rigorously pursue cost-based pricing. Indeed, pricing is at the very core of the statutory framework Congress constructed to eliminate economic barriers to entry in all telecommunications markets. The use of a forward-looking methodology -- with a reasonable risk-adjusted return to incumbents -- promotes fair and efficient competition.

Since the earliest 271 applications, the Commission has made clear that we must make an independent determination that the rates are based on forward-looking costs -- a statutory responsibility that the Commission diligently undertook in the recent *SWBT Kansas/Oklahoma Order*.¹ Today's decision squarely reaffirms this obligation.

Our independent evaluation shows that the original switching rates adopted by the Massachusetts DTE were substantially higher than other states and not within a range of prices that would be consistent with forward-looking principles. With average consumer usage, the per month costs for switching, transport, and signaling would have been \$21.68 in Massachusetts -- more than double the rate in New York and more than 300 percent above the rates in numerous other states in Verizon's territory and across the country. I would not have approved an application that was based upon such rates absent compelling evidence that switching costs in Massachusetts should differ so extraordinarily from those in other states.

The order permits Verizon to rely on current switching rates from New York -- a neighboring state with similar cost characteristics -- to prove compliance with the statutory requirements. I have significant misgivings about this approach. The rates adopted in New York are several years old and are under active review by the New York Commission with a true-up

¹ See, e.g., *Ameritech Michigan Order*, 12 FCC Rcd 20543, 20694-701; *SWBT Kansas/Oklahoma Order* at paras. 47-102.

after it completes its review. As noted above, since our approval of Verizon's New York application, other states have adopted switching rates that are significantly lower than those in New York. Reluctantly, I am compelled to support the decision to grant this application because the rates that were approved by the New York Commission -- and evaluated by this Commission -- are presently in effect and there is insufficient evidence in the record *at this time* to determine that those rates are inconsistent with forward-looking principles.

Today's order correctly recognizes, however, that rates will evolve over time to reflect changed market conditions, new technologies, and updated information on cost inputs. Parties should be forewarned that they should not rely on outdated rates in future applications. Moreover, depending on the New York Commission's decision, Verizon's reliance on the present rates to demonstrate continuing compliance in Massachusetts may be undermined. If the New York Commission orders lower rates after determining that the present rates are not cost-based and Verizon does not revise its rates in Massachusetts, the FCC should use its section 271(d)(6) authority to suspend or revoke Verizon's long-distance authorization in Massachusetts until the DTE completes its cost proceeding.

I am also troubled by the cost inputs used to set the loop rates in Massachusetts. In particular, the fill factor used is exceptionally low. In addition, the designated cost of capital exceeds the figure used to set retail rates in Massachusetts and is substantially higher than the percentages used in the other Verizon states. I have every confidence that the Massachusetts DTE will address any flaws in the inputs through its pending cost proceeding.

As we have consistently noted, opening a local market to competition does not end with the grant of a 271 application. Indeed, the Commission and state commissions must be even more vigilant in ensuring that incumbents live up to their statutory obligations once long-distance authorization is granted.

This application demonstrates the importance of each state commission undertaking an evaluation of forward-looking costs as it establishes rates within its borders. It also demonstrates that, although a forward-looking methodology provides latitude in setting rates, pricing decisions in other states can serve as a benchmark by which a state commission can evaluate the appropriateness of its rates. I encourage state commissions to undertake a pro-active dialogue on pricing with each other and with this Commission so that the benefits of effective competition reach consumers throughout the entire country as quickly as possible.

After this fifth grant of an application to provide long-distance services, there should no longer be any question about *getting to yes*; rather the focus must be on *getting it right*.

**CONCURRING STATEMENT OF
COMMISSIONER HAROLD FURCHTGOTT-ROTH**

Re: Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) and Verizon Global Networks Inc., for Authorization to Provide In-Region, InterLATA Services in Massachusetts (CC Docket No. 01-9)

I support today's decision to grant Verizon Section 271 authority in Massachusetts. While I continue to have doubts about the Commission's overall approach to these proceedings, I believe today's approval is a first step towards a more statutorily-constrained approach to Section 271 applications.

There are a number of hopeful signs in today's Order. First, the Commission has resisted the temptation to condition its approval on some future event or approve entry based on some new information submitted after the filing date.¹ The only relevant consideration should be a carrier's section 271 performance at the time the application is filed. Section 271 is intended to be a snapshot of what actually prevailed in the market 90 days ago not a crystal-ball-gazing speculation about a parade of horrors that may – or may not – happen in the future. When speculation prevails, 11th hour “dealmaking” is not far behind.

Second, today's decision is less intrusive into the province of state commissions. I have long advocated a more deferential approach to state commission decisions, on compliance with the checklist generally and particularly on pricing issues. Today's order moves productively in that direction. Similarly the Commission has refrained from the detailed second-guessing of state commission determinations that once typified these orders.

Finally, today's order more clearly limits our consideration to those items actually in the statutory checklist. Prior decisions seemed at least implicitly to expand that checklist – by “encouraging” and “expecting” companies and commissions to take additional steps that reflected the policy priorities of the erstwhile majority. That practice has now been largely eliminated. Although these are all positive trends, I hope that future commissions will continue down this road.

Nonetheless some aspects of today's Order are not consistent with my overall view of the FCC's role. As I have stated in prior Section 271 decisions, I believe that Section 271 primarily requires the Commission to determine whether a Bell operating company has fulfilled its obligations under Sections 251 and 252, and these are specified in the interconnection agreements into which it has entered.² In this regard, an essential element in my review is

¹ Unfortunately the Kansas and Oklahoma Order suffered from both of these deficiencies.

² See Concurring Statement of Commissioner Harold W. Furchtgott-Roth, *In the Matter of Application by Verizon Under Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in New York*, (continued....)

whether any complaints have been filed at the FCC or with the relevant state commission alleging non-compliance with section 251 generally and section 252 agreements in particular. In the absence of such complaints, I take a highly skeptical view of allegations that are aired for the first time in the Section 271 application process. Section 271 does not create an opportunity to circumvent the statutory dispute resolution process created by Sections 251 and 252. Although today's order does emphasize the utility of complaint processes and the role of the states, it nonetheless indulges new and novel concerns unreviewed elsewhere in far more detail than I would have.

I also wish to emphasize that the FCC's job does not end with approval of Verizon's application. Section 271 (d)(6) sets forth a clear role for the Commission to ensure that Bell operating companies continue to meet the statutory checklist. I share Chairman Powell's commitment to swift and sure enforcement action when licensees violate our rules. Thus we will closely monitor the situation in Massachusetts in order to be certain that Verizon remains in full compliance with Section 271.

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15 FCC Rcd 3953 (1999) Concurring Statement of Commissioner Harold W. Furchtgott-Roth, *In the Matter of Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Texas*, 15 FCC Rcd 18354 (2000); see also Concurring Statement of Commissioner Harold W. Furchtgott-Roth, *In the Matter of Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Kansas and Oklahoma*, CC Docket 00-217 (Jan. 22, 2001).

DISSENTING STATEMENT OF COMMISSIONER GLORIA TRISTANI

Re: Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) and Verizon Global Networks Inc., for Authorization to Provide In-Region, InterLATA Services in Massachusetts (CC Docket No. 01-9)

With the stakes so high, the Commission cannot afford to let Verizon into the Massachusetts long distance market before the company has fully demonstrated compliance with the market opening requirements of section 271. The availability of unbundled network elements (UNEs) at cost-based rates is an essential ingredient of a primary strategy for entering the residential market in Massachusetts. Accordingly, I must dissent, because the Commission should not permit Verizon to enter the in-state long distance market without more rigorous support for its unbundled switching rates in Massachusetts.

Based on the evidence in the record, I cannot conclude that Verizon has demonstrated that its switching rates are based on the forward-looking, total element long run incremental cost (TELRIC) of providing that network element. Prior to filing its second 271 application for Massachusetts, Verizon elected not to rely on the unbundled switching rates set by the Massachusetts Department of Telecommunications and Energy (Massachusetts Department). Instead Verizon chose to rely on voluntarily-adopted rates equivalent to those currently in effect in New York, without providing any further evidence that those rates are TELRIC compliant for Massachusetts.

By allowing Verizon simply to mirror rate levels set four years ago in another state and subject to imminent revision, the Commission has undermined the rigor of its 271 process. Indeed the majority has sent a signal that it will allow reliance on previously approved rates, irrespective of the amount of time passed or pricing information gathered since those rates were last before us. In a declining cost industry characterized by rapid technological innovation, such an approach is inconsistent with our statutory mandate. Nor can the majority's threats of future enforcement action -- particularly with regard to "section 271 checklist items where Verizon's performance was most marginal," such as the pricing of unbundled elements¹ -- substitute for a requirement that Verizon demonstrate full checklist compliance before winning long distance authority.

The record that supported Verizon's New York 271 application in 1999, based on a pricing docket completed in 1997, is not adequate to support Verizon's case in Massachusetts today. The New York Public Service Commission (NYPSC) is expected to revise the New York rates this summer, after it completes its review of additional information regarding the cost of unbundled switching. The NYPSC adopted the current rates at a time when there was comparatively little experience with TELRIC pricing. Since the New York application was

¹ Order at ¶ 251.

adopted, however, the Commission has acquired additional information about the pricing of switching in particular. The applications that the Commission has approved since that time reflected rates for the per-line, per-month cost for switching, transport, and signaling that -- based on WorldCom's usage assumptions -- are roughly half of New York's rates.² Such rate disparities suggest there is a good chance that the NYPSC may revise its rates significantly. At a minimum, such comparisons support the need for additional information to ensure that the Massachusetts switching rate is within the range that reasonable application of TELRIC principles would produce.

In any case, Verizon did not adopt the New York rates for unbundled switching in their entirety. The New York rates, unlike the fixed rates on which Verizon relies, are subject to true-up and potential refund. Moreover, although the NYPSC is expected to complete its pricing proceeding shortly, Verizon did not commit to adopt the resulting rates, which will be based on more complete and updated cost information.

Finally, when we approved Verizon's New York 271 application, we placed "great weight on the New York Commission's active review and modification of Bell Atlantic's proposed unbundled network element prices, its commitment to TELRIC-based rates, and its detailed supporting comments concerning its extensive, multi-phased network elements rate case."³ We do not have the same record in Massachusetts. As the majority describes, significant errors appear to have been made in establishing the original UNE switching rates in Massachusetts. Like the majority, I expect that the Massachusetts Department will examine these issues during the course of its on-going rate case and set rates within the range that a reasonable application of TELRIC principles would produce. But, based on the record currently before me, I cannot conclude that the unbundled switching rates on which Verizon relies are within that range and accordingly must dissent.

² *Id.* at n.798.

³ *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-region, InterLATA Service in the State of New York*, Memorandum Opinion and Order, 15 FCC Rcd 3953, 4081-4082 (1999).